

Counsel appearing on following page

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

JULIE BABAUTA SANTOS, *et al.*,

Petitioners,

v.

FELIX P. CAMACHO, *et al.*,

Respondents.

Civil Case No. 04-00006

CHARMAINE R. TORRES, *et al.*,

Plaintiffs,

v.

GOVERNMENT OF GUAM, *et al.*,

Defendants.

Civil Case No. 04-00038

MARY GRACE SIMPAO, *et al.*,

Plaintiffs,

v.

GOVERNMENT OF GUAM,

Defendant,

v.

FELIX P. CAMACHO, Governor of Guam

Intervenor-Defendant.

Civil Case No. 04-00049

**SIMPAO PLAINTIFFS'  
STATUS REPORT PURSUANT  
TO NOVEMBER 27, 2006  
ORDER OF THE COURT**

SIMPAO PLAINTIFFS'  
STATUS REPORT

PAGE 1

VAN DE VELD SHIMIZU CANTO & FISHER  
East Marine Corps Drive  
Hagatna, Guam 96910  
Tel. 671.472.1131  
Fax 671.472.2886

TOUSLEY BRAIN STEPHENS PLLC  
1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101-1332  
Tel. 206.682.5600  
Fax 206.682.2992

1 VAN DE VELD SHIMIZU CANTO & FISHER  
Suite 101 Dela Corte Bldg.  
2 167 East Marine Corps Drive  
Hagåtña, Guam 96910  
3 671.472.1131

4 TOUSLEY BRAIN STEPHENS PLLC  
Kim D. Stephens, P.S., WSBA #11984  
5 Nancy A. Pacharzina, WSBA #25946  
1700 Seventh Avenue, Suite 2200  
6 Seattle, Washington 98101  
206.682.5600  
7

1 COME NOW Plaintiffs Mary Grace Simpao, Christina Naputi and Janice Cruz,  
2 hereinafter "*Simpao* Plaintiffs," by and through counsel Van de veld Shimizu Canto & Fisher and  
3 Tousley Brain Stephens PLLC, to submit this status report pursuant to this Court's Order dated  
4 November 27, 2006.

5 Before the Court are three consolidated proposed class actions: the *Santos* matter, the  
6 *Simpao* matter and the *Torres* matter. Each seeks to secure payment of long overdue Earned  
7 Income Tax Credits (EIC's) for Guam's poorest taxpayers. The Court has now requested status  
8 reports from the parties to guide discussion of outstanding motions and a timetable for them.

9 A. Brief Background.

10 The *Simpao* Plaintiffs have survived the government's motion to dismiss and obtained a  
11 summary judgment holding that (1) the EIC applies in Guam; and (2) class members' filing of a  
12 tax return constitutes the filing of a claim satisfying the jurisdictional requirement of 26 U.S.C. §  
13 6511. The Court instructed *Simpao* Plaintiffs to move to certify the class and they so moved  
14 shortly thereafter (*Simpao* Docket No. 107). This motion was filed long before consolidation  
15 occurred and is still pending, yet the government has not responded to this class certification  
16 motion.

17 The *Santos* plaintiff never sought a Court ruling on the fundamental issues this case  
18 presents: (1) whether the EIC applies to Guam; and (2) what class of taxpayers can still recover.  
19 Instead *Santos* is on her third attempt to place before this Court a proposed class and settlement  
20 that has yet to pass preliminary scrutiny. Despite the Court's specific request that any further  
21 settlement proposals represent the results of global negotiations, the Defendant and *Santos* and  
22 *Torres* plaintiffs failed to include the Attorney General or meaningfully negotiate with the  
23 *Simpao* Plaintiffs in developing this latest proposal. The *Simpao* Plaintiffs have fully briefed  
24

1 their objections to this procedurally and substantively flawed proposed settlement (*Simpao*  
2 Docket No. 227).

3 B. *Simpao* Plaintiffs' Proposal for Resolution of Outstanding Motions.

4 There are three issues this Court needs to resolve for these matters to move forward: (1)  
5 *Santos*' motion for preliminary approval of its third infirm settlement; (2) appointment of lead  
6 counsel; and (3) class certification. To accomplish these goals *Simpao* recommends the Court  
7 schedule a joint hearing on (1) *Santos*' motion for preliminary approval (and related motions)  
8 and (2) Plaintiffs' Motions for appointment of lead counsel.

9 Regarding the latter, Mike Phillips, counsel for *Santos*, has already submitted a motion to  
10 be appointed lead counsel and the *Simpao* plaintiffs have submitted a brief in opposition (*Simpao*  
11 Docket No. 236). Counsel for *Simpao* Plaintiffs request the opportunity to submit their own  
12 motion for appointment as lead counsel (not to exceed 20 pages per local court rules) and for any  
13 opposing party to be given two weeks to respond with a brief not to exceed 20 pages (per local  
14 court rules).

15 If the Court denies the motion for preliminary approval of the *Santos* settlement, the  
16 Court should set a deadline by which date defendant should respond to *Simpao*'s Motion for  
17 Class Certification, or alternatively, by which date appointed class counsel should move for class  
18 certification. The Court should also establish a discovery cutoff date and deadlines for  
19 dispositive motions. Ultimately, this case should resolve itself on summary judgment (if it has  
20 not already). Should that not be the case, however, the Court should set a date for trial.

21 A summary of *Simpao*'s proposed schedule is presented below:

- 22 1. Deadline for *Simpao*'s Motion for lead counsel;
- 23 2. Deadline for any Response to *Simpao* Motion for Lead Counsel;

3. Hearing Date on Motion for preliminary approval and Motions for Lead Counsel<sup>1</sup>;
4. Decision on motion for preliminary approval and appointment of lead counsel;
5. Deadline for Defendant to respond to Plaintiffs' Motion for Class certification (or for appointed counsel to prepare and submit a motion for class certification), set for three weeks after decision is rendered;
6. Discovery cutoff date;
7. Deadline for dispositive motions;
8. Trial date.

If the court denies approval of the *Santos* settlement and appoints *Santos* counsel as class counsel (or a class counsel committee), the Court may also wish to order a settlement conference be conducted before a sitting federal judge.

Respectfully submitted this 29<sup>th</sup> day of NOVEMBER, 2006.

VAN DE VELD SHIMIZU CANTO & FISHER

By: 

James L. Canto II

TOUSLEY BRAIN STEPHENS PLLC

Kim D. Stephens, P.S., *Pro Hac Vice*

Nancy A. Pacharzina, *Pro Hac Vice*

Attorneys for Plaintiffs Simpao, Naputi & Cruz

<sup>1</sup> Currently pending motions to be addressed at such a hearing include the *Joint Motion Of The Santos And Torres Parties For Preliminary Approval Of Class Action Settlement Agreement*; the *Joint Motion Of The Santos And Torres Parties For Conditional Certification Of The EIC Class For Settlement Purposes*; the *Amended Motion For Attorney's Fees And Costs Pursuant To Section II(a)(iv) Of The May 26, 2006 Class Action Settlement*; the *Motion Of Julie Babauta Santos And Charmaine R. Torres For Leave To File Joint Petition For Declaratory And Injunctive Relief, And/Or For Recovery Of Earned Income Tax Credits, Or In The Alternative For A Writ In The Nature Of Mandamus*; and the *Amended Motion For Appointment Of Lead Class Counsel*.

## CERTIFICATE OF SERVICE

I, JAMES L. CANTO II, certify that I caused a copy of the foregoing document here filed to be served on the following individuals or entities on November 29, 2006, via hand delivery at the following addresses:

Counsel for Petitioner  
Charmaine Torres  
Peter C. Perez, Esq.  
Lujan, Aguigui & Perez, LLP  
Pacific News Bldg., Ste. 300  
238 Archbishop Flores St.  
Hagatna, Guam 96910

Counsel for Respondent  
Felix P. Camacho  
Daniel M. Benjamin, Esq.  
Calvo & Clark, LLP  
655 S. Marine Corps Drive, Ste. 202  
Tamuning, Guam 96913


Counsel for Respondent  
Felix P. Camacho  
Shannon Taitano, Esq.  
Office of the Governor of Guam  
Governor's Complex  
East Marine Corps Drive  
Adelup, Guam 96910

Counsel for Respondents  
Artemio Ilagan and Lourdes Perez  
Rawlen M.T. Mantanona, Esq.  
Cabot Mantanona LLP  
BankPacific Building, 2<sup>nd</sup> Floor  
825 South Marine Corps Drive  
Tamuning, Guam 96913

Counsel for Petitioner  
Julie Babauta Santos  
Michael F. Phillips, Esq.  
Phillips & Bordallo, P.C.  
410 West O'Brien Drive  
Hagatna, Guam 96910

Respectfully submitted this NOVEMBER 29, 2006

VAN DE VELD SHIMIZU CANTO & FISHER  
TOUSLEY BRAIN STEPHENS PLLC

  
\_\_\_\_\_  
James L. Canto II  
Attorneys for Plaintiffs